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Food Law Update

In this update

The new health claims standard

WHAT YOU NEED TO KNOW

- A new Standard (Standard 1.2.7) to regulate nutrition content claims and health claims on food labels and advertisements became law on 18 January 2013. The new Standard has a three year transitional period.
- From **18 January 2016**, the current health claims standard (transitional Standard 1.1A.2) will cease to operate and the conditions in Standard 1.2.7 must be met. There will be no stock in trade option at the end of the transitional period.

WHAT YOU NEED TO DO

- It is important for businesses to commence developing strategies for the implementation of the new Standard 1.2.7 in respect of their food products.
- Because there will be no stock in trade period, businesses must ensure that all of their food products comply with the new Standard 1.2.7 by 18 January 2016.

A new Standard in the Australia New Zealand Food Standards Code (Code) to regulate nutrition content claims and health claims on food labels and advertisements became law on 18 January 2013. Food businesses in Australia and New Zealand have three years from this date to meet the requirements of the new Standard in respect of all applicable foods. During the three year transitional period, businesses may elect to comply with either the existing transitional Standard 1.1A.2 or the new Standard 1.2.7 for a particular food, but not a combination of both.

It is important for businesses to commence developing strategies for the implementation of the new Standard 1.2.7 in respect of their food products. From **18 January 2016**, transitional Standard 1.1A.2 will cease to operate and the conditions in Standard 1.2.7 must be met. There will be no stock in trade option at the end of the transitional period.

How does the new Standard 1.2.7 affect me?

Standard 1.2.7 substantially changes the requirements that foods, food labels and related advertisements must meet.

Key changes include:

***Nutrient content claims*:** Claims regarding the content of certain nutrients or substances in food such as energy, fat, protein or vitamins must meet specific criteria stated in the Standard. By way of example, under the current version of the new Standard, in order to make a claim of "reduced fat", the applicable food must contain at least 25% less fat than in the same quantity of reference food, claiming a "good source of fibre" means the food must contain at least 4g of dietary fibre per serve, and for a "low in sodium" claim the product must contain no more sodium than 120mg per 100mL/g (as applicable).

***Health claims*:** A health claim is broadly defined as a claim which states, suggests or implies that a food or a property of food has, or may have, a health effect. These differ from "nutrient content claims" in that they refer to a relationship between food and health rather than a statement of content. There are two types of health claims:

- ***General level health claims***, which refer to a substance in a food and its effect on a health function, eg, "calcium is good for bones". There are over 200 pre-approved general level health claims listed in the Standard, on which food businesses may base their claims. If a business wishes to make a claim on a food label or advertisement outside of the pre-approved list, it can choose to self-substantiate the claim and notify FSANZ in accordance with the procedure prescribed in the Standard.
- By contrast, ***high level health claims*** link a substance in a food to a serious disease or biomarker of a serious disease, eg, "calcium reduces risk of osteoporosis in people 65 years and over". There are currently 13 pre-approved high level health claims listed in the Standard. If a business wishes to make a high level health claim outside of the pre-approved list, it must make an application to FSANZ to have the claim added to the Standard.

However, health claims will only be permitted in respect of foods that meet the Nutrient Profiling Scoring Criterion (NPSC), a new tool that generates a "score" for foods based on certain properties of the food. The NPSC is aimed at ensuring that foods carrying health claims are not too high in saturated fat, sugar and sodium (with exceptions for special purpose foods).

Endorsements, which are nutrient content claims or health claims made by suppliers with the permission of an endorsing body are allowed under the Standard, so long as the endorsing body is independent of the supplier and is a not-for-profit entity which has a nutrition/health related function.

Therapeutic claims, that is, claims on food labels or advertisements that refer to the prevention or alleviation of a disease or condition, continue to be prohibited under the new Standard except where expressly permitted by another part of the Code.

Conclusion – Aiming for more clarity

Although the provisions of the *Competition and Consumer Act 2010* (Cth) are still applicable to questions of misleading or deceptive conduct on food labels and advertisements, the specific nature of the requirements under the Standard aims to provide food businesses with greater clarity as to what is permissible when making nutrition or health claims on food. It is also directed at providing consumers with a greater degree of information and consistent benchmarks for such claims.

This long awaited Standard has been enacted in the context of increasing focus by authorities and consumers on the food industry and the legitimacy of health related claims made on food. It remains to be seen how effectively the new Standard addresses competing concerns including consistency and accuracy of health claims and the food industry's drive for innovation.

You can find a copy of the new Standard at: http://www.comlaw.gov.au/Series/F2013L00054

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Bonsoy class action widens to include exporter and manufacturer as defendants

WHAT YOU NEED TO KNOW

- A class action against the supplier of "Bonsoy" brand soy milk has been widened to include two Japanese companies as defendants - the exporter and the manufacturer of Bonsoy.
- Whether you are a manufacturer, importer, supplier or distributor of foods or other consumer goods, you are liable under the consumer guarantee and defective goods regimes of the *Competition and Consumer Act 2010* (Cth) (formerly the *Trade Practices Act 1974*) for the quality and safety of goods sold by you in Australia.

WHAT YOU NEED TO DO

- You should investigate any complaints in relation to consumer goods manufactured or sold by you in Australia, as a voluntary product recall may be required if there is a risk to consumer health or safety.
- In the absence of a supplier or manufacturer initiating a voluntary recall, a mandatory recall may be imposed by the Australian Competition and Consumer Commission or other industry regulator. In this case, Food Standards Australia New Zealand co-ordinated the national recall of Bonsoy and issued a media statement advising people not to consume it.
- Complaints and product recalls in relation to consumer goods manufactured or sold in Australia will likely be investigated by plaintiff law firms and litigation funders, and may give rise to consumer class action proceedings. Australia is considered to have one of the most liberal class action regimes in the world and there is considerable scope for plaintiff law firms to define the class of affected consumers. Often the class is broad – in this case, the class members comprise more than 600 Australians who consumed Bonsoy at some point during a 5 year period.

In September 2010, a class action was commenced in the Supreme Court of Victoria against Spiral Foods Pty Ltd (Spiral Foods), the distributor of "Bonsoy" brand soy milk. In December 2012, the action was expanded to join Muso Co Ltd (the exporter of Bonsoy) (Muso) and Marusan-ai Co Ltd (the manufacturer of Bonsoy) (Marusan-ai) as defendants.

The proceedings follow a voluntary recall of Bonsoy in Australia by Spiral Foods in December 2009 following a request from the Victorian Department of Health, after discovering that Bonsoy contained high levels of iodine – around seven times the safe upper limit for adults. It is alleged that the high iodine levels were caused by a reformulation of Bonsoy in 2003, which rendered it unsafe for human consumption.

This class action was commenced on behalf of more than 600 Australians who allegedly consumed Bonsoy between July 2004 and 24 December 2009 and suffered health related consequences as a result, including thyroid dysfunction, exacerbation of pre-existing thyroid conditions or iodism. The class members also include infants who suffered thyroid dysfunction as a result of maternal consumption of Bonsoy during this period.

The plaintiff alleges that Spiral Foods, a company incorporated in Australia, committed a number of breaches of the *Trade Practice Act 1974* (Cth) (Act) (now the *Competition and Consumer Act 2010* (Cth)). In particular, the plaintiff alleges that:

- Spiral Foods is deemed to have manufactured Bonsoy under sections 74A(3) and (4) of the Act because it imported Bonsoy into Australia and caused its name or brand to be applied to the packaging of Bonsoy. Spiral Foods admits this allegation.

- Given its high levels of iodine, the Bonsoy product supplied by Spiral Foods:
  - was not of merchantable quality under section 74D of the Act; and
  - had a defect under section 75AD of the Act. Furthermore, the packaging of Bonsoy did not contain any warning that disclosed the high iodine content, the safe consumption levels of Bonsoy, nor that consumption of excess iodine may have serious health consequences. Spiral Foods denies these allegations.

The plaintiff also alleges that Spiral Foods was negligent in distributing Bonsoy for supply to consumers and promoting Bonsoy as a safe and healthy product, when it had reason to know that there was a real risk that Bonsoy could contain levels of iodine that were harmful to human health. The alleged source of that knowledge included:

- that it was well documented that kombu (one of the key ingredients in Bonsoy) contained high levels of iodine;
- following a consumer query in 2006, the defendants obtained an iodine analysis of Bonsoy which showed that Bonsoy contained levels of iodine exceeding the upper safe daily intake;
- the defendants received further queries from consumers in 2007 and 2009 as to the iodine content of Bonsoy; and
- the association between high iodine consumption and thyroid dysfunction was also well documented at this time.

The plaintiff contends that Muso, as the exporter of Bonsoy, and Marusan-ai as the manufacturer of Bonsoy:

- were negligent;
- are liable under the Japanese Product Liability Act for damages arising from defects in the Bonsoy product; and/or
- violated the Japanese Civil Code, which provides that a person who has intentionally or negligently infringed rights of others shall be liable to compensate any damages resulting in consequence.

Muso admits to supplying soy milk to Spiral Foods for importation, but denies other allegations. Muso claims, by way of defence, that it did not hold itself out as having expertise in relation to likely health effects of food products on consumers in Australia and that this responsibility fell to Spiral Foods. It contends that Spiral Foods did not rely on Muso's skill and judgment, and in any event that it would have been unreasonable for Spiral Foods to do so as Muso was not the manufacturer of Bonsoy. Muso also claims that Spiral Foods took responsibility for specifications in relation to the packaging of Bonsoy, including the specification of mandatory nutritional information required under Australian law.

Marusan-ai, while accepting that it has expertise in the manufacture of food products from soybeans and proposed the substitution of kombu in the 2003 reformulation, maintains that any loss or damage was caused entirely by the conduct of Spiral Foods, which received details of the level of iodine in Bonsoy in 2006, but failed to consider whether it posed a risk to Australian consumers.

Spiral Foods and Muso contend that the claim is now statute barred, on the basis of the three year limitation period in NSW in personal injury cases.

The case has been set down for hearing in November 2013.

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Penalties imposed for misleading trade marks, business names & logos regarding the place of origin of food

Australian Competition and Consumer Commission v Kingisland Meatworks and Cellars Pty Ltd [2012] FCA 859 and [2013] FCA 48

WHAT YOU NEED TO KNOW

- Misrepresenting the place-of-origin of foods is likely to attract the attention of the ACCC and erode consumer confidence in a manufacturer's brand and products.
- Where there has been a change in circumstances and food is no longer sourced from the place or region represented in an trade mark, business name or logo, the continued use of this trade mark, business name or logo in the promotion of the food product is likely to amount to misleading or deceptive conduct.
- The accuracy of place of origin representations will continue to be a point of focus for the ACCC.

WHAT YOU NEED TO DO

- Manufacturers and suppliers need to ensure that they do not mislead consumers as to the place of origin when promoting food products.
- If a food is no longer sourced from the place or region represented in a trade mark, business name or logo, advice should be sought on whether the continued use of that trade mark, business name or logo would be likely to mislead or cause deception.

On 3 February 2013, in proceedings brought by the Australian Competition and Consumer Commission (ACCC)[1], the Federal Court of Australia imposed a $50,000 penalty on King Island Meatworks and its manager/sole director for falsely representing, through its business name, trade marks, website/domain names, logos and advertisements, that its meat products were sourced from King Island[2].

The decision provides useful guidance for manufacturers in relation to place-of-origin representations, particularly regarding the circumstances in which trade marks and business names containing regional or geographical references could be misleading in breach of the Australian Consumer Law (ACL).

Conduct

King Island Meatworks and Cellars commenced its meat retailing business in 2001. At that time, it chose to incorporate the phrase "King Island" and prominent objects associated with King Island, such as its famous lighthouse, into its trading name, trade marks, logos, website/domain names, shop signage and advertisements. From 2001 to mid-2002, the business sourced about 70% of its meat from King Island, a location known for its good quality meat.

Since mid-2002 however, King Island Meatworks was not able to source any of its meat products from King Island. Notwithstanding this change in circumstances, the business continued to use the phrase "King Island" and objects associated with that region in the same ways.

In November 2010, the ACCC wrote to King Island Meatworks to advise that the continued use of the phrase "King Island" in relation to its business after mid-2002 was likely to amount to misleading or deceptive conduct given that King Island Meatworks was no longer sourcing any or very little of its meat

1 *Australian Competition and Consumer Commission v Kingisland Meatworks and Cellars Pty Ltd* [2012] FCA 859

2 *Australian Competition and Consumer Commission v Kingisland Meatworks & Cellars Pty Ltd* [2013] FCA 48

products from King Island. The ACCC commenced proceedings against King Island Meatworks and its manager/sole director, Mr Mastromanno, in 2011.

The Federal Court's assessment

The Court accepted that when the business chose and first used the phrase and association with "King Island" in its business name, trade marks, website/domain name, logos, store signage and advertisements, this conduct was not misleading because the majority of its meat products were in fact sourced from King Island.

However, from mid-2002 to the present, when none or very little of its products were sourced from King Island, the Court considered that the continued use of the phrase "King Island" in the same way in relation to the business amounted to misleading or deceptive conduct. The Court also found that the business's sole director, Mr Mastromanno was knowingly concerned in the conduct.

- The Court emphasised that the conduct was misleading or deceptive notwithstanding that the business name, trade marks, website/domain name, logos and store signage all contained the phrase "King Island":
- had been properly registered and obtained; and
- were probably used innocently (that is without any intention of misleading the public) until November 2010 when the ACCC notified the business of concerns in relation to the accuracy of the conduct.

While the Court was not prepared to find that consumers were induced to pay more for the relevant meat products as a result of the misleading conduct, it did find that the effect of the misleading conduct was that consumers were deprived of the opportunity to make a properly informed purchasing decision.

In imposing a penalty of $50,000, the Court noted that it was important to fix a penalty that would provide a deterrent for others seeking to engage in similar conduct. The penalty roughly corresponded with the net annual turnover of the King Island Meatworks business.

The Court also made orders preventing the business from using the phrase "King Island" in relation to any aspects of its business, including in its business name, signage, domain name, logos, trade marks, and promotional material, and requiring it to publish corrective notices in its store and shop front.

The decision in context

The Federal Court's reprimand of King Island Meatworks is consistent with other recent developments in this area including:

- Food manufacturer Double D was issued with a $6,600 infringement notice for falsely claiming its eucalyptus oil was made in Australia.
- Supermarket chain Aldi was reprimanded by the ACCC for selling honey labelled as "Kangaroo Island honey" in circumstances where each jar contained as little as 0.076% honey sourced from that region.

In October 2012, the ACCC announced that it would release guidelines on place-of-origin representations and that place-of-origin representations will continue to be an important point of focus for the regulator.

Parliament is presently considering the *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012* (Cth) which seeks to enact more specific mandatory information standards for place-of-origin food labelling in the ACL[3].

Lessons

Misrepresenting the place-of-origin of foods is likely to attract the attention of the ACCC and erode consumer confidence in a manufacturer's brand and products. Accordingly, it is important that manufacturers and suppliers consistently ensure that they do not falsely represent the place-of-origin of their food products at any point in time.

A failure to adjust representations made as to place-of-origin if the source of the products or inputs change over time risks breaching the ACL.

"Misrepresenting the place-of-origin of foods is likely to attract the attention of the ACCC and erode consumer confidence."

[3] The Bill seeks to enact the recommendations on country-of-origin labelling reforms made by the independent review into food labelling in 2011 - The Blewett Review, *Labelling Logic: Review of the Food Labelling Law and Policy*, 2011 available at http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/content/48C0548D80E715BCCA257825001E5DC0/$File/Labelling%20Logic_2011.pdf

As the Federal Court's decision in *King Island Meatworks* demonstrates, the implications for businesses extends beyond the traditional confines of product labelling. Place-of-origin representations must also be considered in the context of more fundamental aspects of the operation and identity of a business, including its valuable intellectual property such as business names, trade marks, website/domain names and logos.

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FOOD LAW BITES

Luv-a-Duck facing ACCC action

The ACCC has instituted proceedings against duck meat producer Luv-a-Duck Pty Ltd in the Federal Court of Australia alleging false, misleading and deceptive conduct in relation to the promotion and supply of its duck meat products. In particular the ACCC has alleged that Luv-a-Duck has falsely promoted that its ducks were "*grown and grain fed in the spacious Victorian Wimmera Wheatlands*" and were "*range reared and grain fed*".

According to the ACCC, the duck products produced by Luv-a-Duck were, in reality, produced from ducks that had limited access to the outdoors. The ACCC is seeking a range of remedies including injunctions and the publication of corrective advertising by Luv-a-Duck. The matter is in the Fast Track List of the Federal Court. Luv-a-Duck recently filed its response and the matter has been listed for a mediation in the week commencing 11 June 2013.

Credence claims in relation to food an ACCC priority for 2013

On 21 February 2013 the ACCC Chairman, Rod Sims announced the ACCC's 2013 compliance and enforcement priorities. Of interest to those in the food industry, one of the ACCC's consumer protection priorities for 2013 is credence claims, particularly those in the food industry. It was noted that consumers are increasingly placing weight on premium claims made by producers which cannot be validated or tested by consumers. The various actions taken by the ACCC against a range of food manufacturers in relation to credence claims, including those discussed in this publication, indicate that the ACCC is taking this priority very seriously.

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FSANZ to clarify use of carbon monoxide as a processing aid for fish

WHAT YOU NEED TO KNOW

- FSANZ released a draft proposal for public comment which proposes to amend processing aid standard, Standard 1.3.3 of the Australia New Zealand Food Standards Code to clarify that carbon monoxide is not permitted to be used as a processing aid for fish. The issue with using carbon monoxide as a processing aid for fish is that it also has the effect of maintaining the red colour of certain red-fleshed fish, such as tuna, which can then hide the age of a fish and make it look fresher than it actually is.
- The proposal follows reports that some overseas fish processors have been using carbon monoxide as a processing aid for this secondary purpose despite it already being prohibited by the Code.

WHAT YOU NEED TO DO

- If you are a fish importer, supplier or retailer, ensure that carbon monoxide is not used in any fish that you import, supply or sell.

On 17 December 2012, Food Standards Australia New Zealand (FSANZ) released for public comment draft proposal P1019 (Proposal) which suggests amendments to processing aid standard, Standard 1.3.3 of the Australia New Zealand Food Standards Code (Code) to clarify that carbon monoxide (CO) is not permitted to be used as a processing aid for fish.

Standard 1.3.3 of the Code currently provides that CO is generally permitted to be used as a processing aid. A processing aid is a substance that can be used for the treatment and processing of food, **unless** it performs a technological function in the final food. An example of a technological function would be anything which adds or restores colour to foods, or colour fixation, which stabilises, retains, or intensifies an existing colour of a food.

The issue with using CO as a processing aid for fish is that when CO is used to treat or process red-fleshed fish, such as tuna, an ongoing technological function arises, namely the CO reacts irreversibly with the tissue of the fish, resulting in the colour of the fish being preserved as a bright cherry-red colour, a colour which is associated with fish that is fresh. This process of treating fish with CO to maintain its colour is well known and in some parts of the world has been practised for at least 10 years. Such practice is of significant concern to FSANZ because of its ability to hide the age of fish, by making the fish appear fresher than it is, as well as potential safety issues associated with poorly handled fish.

According to the Proposal, Australian and New Zealand agencies that enforce the Code have consistently regarded the treatment of fish with CO as being not permitted by the Code, because the treatment of fish with CO does not meet the definition of a processing aid (due to its additional technological function) and the Code does not permit the use of CO as a food additive. Nevertheless, there is concern that the current wording in the Code is not specific enough and may therefore inadvertently cause non-permitted uses of CO in the treatment of fish. This concern follows reports that some fish processors have been using CO as a processing aid, (although not any based in Australia or New Zealand).

"If you are a fish importer, supplier or retailer, ensure that carbon monoxide is not used in any fish that you import, supply or sell."

The Proposal

The Proposal therefore seeks to clarify that the treatment of fish with CO is not permitted despite Standard 1.3.3 currently listing CO as a generally permitted processing aid. It is proposed that the Code will be varied to specifically exclude fish from the foods that can be processed with CO. The proposed amendments are consistent with international food standards and many other countries' standards.

The treatment of fish with CO gas is not permitted in countries/regions such as the USA, Singapore, Canada, the EU and Japan.

The deadline for submissions on the Proposal was 11 February 2013. It is expected that the FSANZ Board will consider the Proposal for approval in the next few weeks.

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FOOD LAW BITE

Country of origin labelling for unpackaged meat products required from 18 July 2013

In our last edition of *Food Law Update* (June 2012) we reported that Food Standards Australia New Zealand (FSANZ) had approved the proposal for mandatory country of origin labelling to be extended to unpackaged beef, chicken and lamb offered for retail sale in Australia. This change will result in amendments being made to Standard 1.2.11 of the Australia New Zealand Food Standards Code which deals with country of origin labelling. The amendments were gazetted by FSANZ on 7 January 2013 and will commence operation on 18 July 2013.

Therefore, if you sell any unpackaged beef, chicken or lamb products to the retail market in Australia you will need to ensure that the country of origin of the product is identified on and from 18 July this year.

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Mutton dressed as lamb

NSW Food Authority v Tolstat Pty Limited [2012] NSW Chief Industrial Magistrates Court

WHAT YOU NEED TO KNOW

- Tolstat was found guilty of falsely describing and labelling its hogget as "lamb" in breach of section 18(2) of the *Food Act 2003* (NSW) and had breached section 104 of the Act by failing to comply with the Food Safety Scheme under the Act. However, the Court found that there was insufficient evidence demonstrating an intention by Tolstat to mislead and deceive under section 18(1) of the Act.
- The Court in this case considered that an **intention** by Tolstat to mislead and deceive was a requirement for "misleading and deceptive conduct" under section 18(1) of the Act to be established. This is in contrast with section 18 of the Australian Consumer Law (Schedule 2 of the *Competition and Consumer Act 2010* (Cth)), where it is not necessary to demonstrate intention for the purposes of demonstrating that conduct is "misleading and deceptive".

WHAT YOU NEED TO DO

- If you are a food producer, ensure that you are complying with any Food Safety Schemes that you have in place and take care to properly label your food in a way that is not false, misleading or deceptive.

Tolstat Pty Limited operated an abattoir in NSW and held a licence as a food business issued by the NSW Food Authority (NSWFA).

In 2008, in response to complaints from the industry, the NSWFA conducted a state-wide audit of lamb identification procedures. During its investigations, the NSWFA identified discrepancies in the livestock and slaughter records at Tolstat's abattoir, which indicated that Tolstat had bought hogget which it had then slaughtered, labelled and sold as "lamb". "Lamb" is defined in section 60(1) of the *Food Regulation 2004* (NSW) as "an ovine animal that has not cut a permanent incisor tooth"; "hogget" is defined as "an ovine animal that has cut at least one, but no more than two, permanent incisor teeth."

NSW Food Authority's claims

The NSWFA commenced proceedings against Tolstat in the NSW Chief Industrial Magistrates Court claiming that Tolstat was guilty of 66 offences under the *Food Act 2003* (NSW) (Act). The NSWFA alleged that on several occasions between October 2007 and January 2008:

- in breach of section 18(1) of the Act, Tolstat had engaged in misleading and deceptive conduct and/or conduct that was likely to mislead or deceive in relation to the labelling of food intended for sale, being hogget which was labelled as "lamb";
- or, in the alternative, in breach of section 18(2) of the Act, Tolstat had labelled food in a way which falsely described the food for the purposes of effecting or promoting sale of the food, being hogget that was falsely labelled and described as "lamb"; and
- in breach of section 104(1) of the Act, Tolstat handled and/or sold food in a manner that contravened a provision of the Food Safety Scheme in place at the abattoir, by failing to conduct "dentition" of the slaughtered hogget (ie, an assessment to confirm whether the carcasses were hogget or lamb) in order to ensure that the correct prescribed brand was applied to each carcass.

The NSWFA provided evidence that Tolstat had purchased ovine identified and sold as "hogget" from various sale yards, but that Tolstat's employees had failed to comply with the Food Safety Scheme in place at Tolstat's abattoir by conducting dentition of the hogget carcasses which would have confirmed that they were hogget rather than lamb. The evidence showed that Tolstat then labelled and sold the carcasses as "lamb".

Decision

The Court found that that the NSWFA had established beyond reasonable doubt that Tolstat was guilty of the following offences:

- falsely describing food by labelling hogget as "lamb" for the purpose of effecting or promoting the sale of the food, in breach of section 18(2) of the Act; and
- handling or selling food (ie, hogget) in contravention of a food safety scheme, by failing to conduct dentition of the hogget and by incorrectly identifying and branding the hogget as lamb, in breach of section 104 of the Act.

However, the Court found that the NSWFA had not established beyond reasonable doubt that Tolstat was guilty of an offence under section 18(1) of the Act because it had not demonstrated that Tolstat's conduct was deliberately motivated by a desire to mislead or deceive. An intention by Tolstat to mislead or deceive was a requirement under section 18(1). The Court observed that the NSWFA had elected not to call Tolstat's agents or employees as witnesses which meant that they could not be questioned before the Court and, therefore, the Court could not assess whether Tolstat's misleading and deceptive conduct was intentional.

The Court fined Tolstat $66,000 for the 66 offences under sections 18(2) and 104 of the Act.

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FOOD LAW BITE

FSANZ adopts WHO limits on chemical substances in packaged water

On 17 December 2012, Food Standards Australia New Zealand (FSANZ) determined to vary the *Australian New Zealand Food Standards Code* (Code) by placing limits on chemical substances allowed in packaged water to bring the Code in line with international food standards established by the World Health Organisation (WHO).

The Code contained limits on chemical substances in packaged water which had not been reviewed since the Code was first published in December 2000. Therefore, FSANZ decided to update the Code to take into account current scientific evidence relating to safety of chemicals found in packaged water. In particular, subclause 2(2) in Standard 2.6.2 of the Code and the associated table have been amended to reflect the WHO guidelines associated with packaged water for human consumption. FSANZ concluded that the WHO guidelines represented the most contemporary international set of limits that could be used for packaged water.

Only one exception was made to adopting the chemical limits of the WHO guidelines in relation to the limit for fluoride. A maximum limit for fluoride of 1.0mg/L was proposed and not 1.5 mg/L as indicated in the WHO guidelines. This value was based on FSANZ's own dietary intake assessment of fluoride in packaged water. The changes came into effect on 21 February 2013.

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